

CHAPTER 8

REPROGRAMMING

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CHAPTER 8

REPROGRAMMING

I. INTRODUCTION. Upon completing this instruction, the student will understand:

- A. The difference between reprogramming and transferring funds.
- B. The procedural rules involved in reprogramming funds.
- C. The special rules involved in reprogramming for military construction purposes.

II. REFERENCES.

- A. Department of Defense Appropriations Act (Annually).
- B. DOD Regulation 7000.14-R, Financial Management Regulation, vol. 3, chs. 3, 6, and 7 [hereinafter DOD FMR] available at <http://www.dtic.mil/comptroller/fmr/>.
- C. Defense Financial and Accounting Service - Indianapolis 37-1, Finance and Accounting Policy and Implementation, ch. 3, para. 0306 (Jan. 2000 w/ changes through March 2005) available at <https://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/index.htm>.
- D. Air Force Instruction 65-601, Volume I, ch. 2, para. 2.3, Budget Guidance and Procedures (3 March 2005) available at <http://www.e-publishing.af.mil>.
- E. Department of Navy, NAVSO P-1000, Financial Management Policy Manual, ch. 1, pt. D (12 December 2002) available at <http://www.fma.hq.navy.mil/policies/regulations.htm>.

- F. U.S. Government Accountability Office, Principles of Federal Appropriations Law, 2-24 to 2-31 (3d ed., vol. I, 2004) [hereinafter GAO Principles of Fed. Appropriations Law] available at www.gao.gov/special.pubs/og92013.pdf.

III. DEFINITIONS.

- A. Reprogramming. Reprogramming is the use of funds in an appropriations account for purposes other than those contemplated by the agency at the time of the appropriation. DOD FMR, vol. 2A, ch. 1, para. 010107 (June 2004).
- B. Transfer Authority. Annual authority provided by Congress to transfer budget authority from one appropriation or fund account to another. DOD FMR, vol. 2A, ch. 1, para. 010107 (June 2004).

IV. TRANSFERS DISTINGUISHED FROM REPROGRAMMING.

- A. Transfers. GAO, Principles of Fed. Appropriations Law, p. 2-24.
1. Transfers shift money between appropriations accounts.
 2. There are three types of transfers.
 - a. Transfers between accounts within the same agency, e.g., Operation and Maintenance account to Military Personnel account.
 - b. Transfers between agencies, e.g., Department of Defense to Department of State.
 - c. Transfers to/from “earmarks,” e.g., where Congress includes an “earmark” for a specific purpose within a general appropriation. Matter of John D. Webster, B-278121, 98-1 CPD ¶ 19.
 3. Transfers require statutory authority. 31 U.S.C. § 1532; The Honorable Peter Hoekstra, B-279886, 1998 WL 229292 (C.G.).

- a. 31 U.S.C. § 1532 prohibits transfers without statutory authority.
- b. There are generally two types of transfer authority: general and specific.
 - (1) General Transfer Authority. General Transfer Authority is provided in either appropriations acts or in permanent legislation.
 - (a) Congress provides general transfer authority to DOD in each of its appropriations acts. See, e.g., Department of Defense Appropriations Act FY 2003, Pub. L. No. 107-248, § 8005, 116 Stat. 1519, 1537 (2002).
 - (b) Permanent Legislation. See, e.g., 7 U.S.C. § 2257 (authorizing transfers between Department of Agriculture appropriations in an amount not to exceed seven percent of the “donor” appropriation).
 - (2) Specific Transfer Authority. Congress authorizes or directs the movement of funds between specific programs. See, e.g., Overseas Contingency Operations Transfer Fund, Department of Defense Appropriations Act FY 2003, Pub. L. No. 107-248, Title II, 116 Stat. 1519, 1524 (2002).
- c. The statutory prohibition applies even though the transfer is intended as a temporary expedient and the agency contemplates reimbursement. To the Secretary of Commerce, B-129401, 36 Comp. Gen. 386 (1956).
- d. An unauthorized transfer violates the purpose statute, 31 U.S.C. § 1301(a), and constitutes an unauthorized augmentation of the receiving appropriation.

- e. Exception. 31 U.S.C. § 1534 authorizes an agency to charge one appropriation for expenditure benefiting another appropriation of the same agency. See Use of Agencies' Appropriations to Purchase Computer Hardware for Department of Labor's Executive Computer Network, 70 Comp. Gen. 592 (1991).
- B. Reprogramming. See generally, GAO, Principles of Fed. Appropriations Law, p. 2-29.
 - 1. Reprogramming shifts money within an appropriations account.
 - a. There is no change in the total amount available in the appropriations account.
 - b. Reprogramming is not a request for additional funds; rather, it is a reapplication of funds.
 - 2. When Congress appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions on the expenditure of the funds. LTV Aerospace Corp., B-183851, Oct. 1, 1975, 55 Comp. Gen. 307, 75-2 CPD ¶ 203.
 - 3. Subdivisions of an appropriation contained in the agency's budget request or in committee reports are not legally binding upon the department or agency concerned unless they are specified in the appropriations act itself. Newport News Shipbldg. and Dry Dock Co., B-184830, 55 Comp. Gen. 812 (1976).
 - 4. Reprogramming is based on minimal congressional and legislative guidance.
 - a. Agencies must comply with the requirements of 31 U.S.C. § 1301.
 - b. Agencies must check appropriations acts for statutory prohibitions to proposed reprogramming.

5. Items eligible for reprogramming. Agencies may submit actions only for higher priority items, based on unforeseen military requirements, than those for which the funds were originally appropriated. See Department of Defense Appropriations Act FY 2005, Pub. L. No. 108-287, § 8005, 118 Stat. 969 (2004).
6. Items ineligible for reprogramming. Agencies may not submit actions on items for which funds have previously been requested from Congress but denied. See Department of Defense Appropriations Act FY 2005, Pub. L. No. 108-287, § 8005, 118 Stat. 969 (2004).

V. REPROGRAMMING TYPES.

- A. Reprogramming Actions Requiring Prior Approval of Congressional Committees. DOD FMR vol. 3, ch. 6, para. 060401.A-F.
 1. Most fund shifting/movements that make use of general transfer authority. See DOD FMR, vol. 3, ch. 6, para. 060401.C., for exceptions.
 2. Any reprogramming that involves an item designated as a Congressional interest item.
 3. Any increase in the procurement quantity of a major end item, such as an individual aircraft, missile, naval vessel, tracked combat vehicle, and other weapon or torpedo and related support equipment.
 4. Any reprogramming action that involves the application of funds which exceed thresholds agreed upon by the congressional committees and DOD:
 - a. Military Personnel: cumulative increases in a budget activity¹ of \$10 million or more.
 - b. Operation and Maintenance: cumulative increases in a budget activity of \$15 million or more.

¹ Budget activities are defined as categories within each appropriation and fund accounts that identify the purposes, projects, or types of activities financed by the appropriation or fund. DOD FMR, vol. 3, ch. 6 (December 1996).

- c. Procurement: cumulative increases for any program year of \$20 million or more; cumulative decreases for any program year of \$20 million or more, or 20 percent of the apportioned amount, whichever is greater.²
 - d. Research, Development, Test, and Evaluation (RDT&E): cumulative increases for any program year of \$10 million or more in an existing program element; cumulative decreases for any program year of \$10 million or more, or 20 percent of the appropriated amount, whichever is greater.³
- 5. New Starts: a program, subprogram, modification, project or subproject not previously justified by DOD and funded by Congress is considered a “new start.” Congressional committees discourage the use of reprogramming to initiate new starts. For specific notification and approval procedures, see DOD FMR, vol. 3, ch. 6, paras. 060401.
- 6. Termination of programs that result in elimination of certain procurement programs and subprograms and RDT&E elements, projects, and subprojects.

B. “Internal” Reprogrammings. DOD FMR, vol. 3, ch. 6, para. 060402.

- 1. Internal reprogrammings fall into three general categories:
 - a. actions involving a reclassification or realignment of funds within budget activities or within budget line items/program elements;
 - b. reprogramming to or from transfer accounts (e.g., Overseas Contingency Operations Transfer Account, Department of Defense Appropriations Act FY 2005, Pub. L. No. 108-287, Title II, 118 Stat. 956 (2004)); and

² In the conference report accompanying the FY 2003 Omnibus Appropriations Act, Congress raised the threshold from \$10 million to \$20 million for 2003/2005 appropriations for Procurement programs. H.R. Conf. Rep. No. 108-10, at 1499 (2003).

³ Congress also raised the threshold from \$4 million to \$10 million for 2003/2004 appropriations for Research, Development, Test and Evaluation programs. *Id.*

- c. approval to increase quantities, when congressional approval is not otherwise required.
 - 2. Technically, funding changes within program elements are not regarded as “reprogramming.” The Honorable Roy Dyson, House of Representatives, B-220113, 65 Comp. Gen. 360 (1986).
 - 3. Internal reprogrammings are not subject to dollar thresholds.
 - 4. Internal reprogrammings do not require prior congressional approval or notification. Such actions are audit-trail type actions processed within DOD Secretary of Defense, Comptroller.
- C. Below Threshold Reprogrammings. DOD FMR, vol. 3, ch. 6, para. 0608.
- 1. Below threshold reprogrammings are those reprogramming actions that do not exceed the thresholds identified above, in paragraph V.A.4, individually or when combined with other below-threshold reprogramming actions.
 - 2. Congress performs oversight through the DOD’s semiannual submission of its DD 1416, Report of Programs.
- D. Letter Notifications. DOD FMR, vol. 3, ch. 6, para. 060403.
- 1. Letter notifications apply to below threshold reprogramming for new programs or line items not otherwise requiring prior approval or notification.
 - 2. Notification to the appropriate committees requires a 30-day automatic hold on funds.
- E. Intelligence Related Reprogrammings. DOD FMR, vol. 3, ch. 6, para. 0606.
- 1. Generally, the same rules apply to reprogramming intelligence resources as provided for other reprogramming actions under DOD FRM, vol. 3, ch. 6, para. 060602.

2. Some special rules do apply:
 - a. Actions reprogramming DOD appropriations that impact the National Foreign Intelligence Program are subject to additional guidelines.
 - b. The Office of Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) has responsibility for determining applicability of the reprogramming rules to above or below threshold reprogramming actions that may affect certain intelligence and related activities.

VI. MILITARY CONSTRUCTION REPROGRAMMING. DOD FMR, vol. 3, ch. 7.

- A. General. The congressional subcommittees concerned with the appropriation and authorization of military construction and family housing funds have agreed that, in executing approved programs, some flexibility is required in adjusting approved funding levels to comply with new conditions and to effectively plan programs to support assigned missions. Departmental adjustments or reprogrammings may be required for a number of reasons including:
 1. Responding to emergencies;
 2. Restoring or replacing damaged or destroyed facilities;
 3. Accommodating unexpected price increases; and
 4. Implementing specific program provisions provided for by congressional committees.
- B. Authority.

1. 10 U.S.C. § 2853. Authorizes a reprogramming request when the Secretary of a military department determines that a cost increase is required solely to meet unusual variations in construction costs that the agency could not have reasonably anticipated at the time Congress originally approved the project. The Secretary concerned may increase the cost of a “specified” military construction project by the lesser of:
 - a. 25% of the appropriated amount; or
 - b. 200% of the UMMC ceiling (i.e., \$3 million).
2. 10 U.S.C. § 2803. Provides permanent authority to obligate and reprogram up to \$45 million annually for emergency construction if a project is:
 - a. Not otherwise authorized by law;
 - b. Vital to national security; and
 - c. So urgent that waiting until the next budget submission would be inconsistent with national security.
3. 10 U.S.C. § 2854. Provides permanent authorization for the restoration or replacement of facilities damaged/destroyed due to natural disasters. If the estimated cost of the project exceeds the UMMC threshold (i.e., \$1.5 million), the Secretary concerned must notify the appropriate committees of Congress.
4. 10 U.S.C. § 2672a. Provides permanent authority to acquire interest in land that:
 - a. Is needed in the interest of national defense;
 - b. Is required to maintain the operational integrity of military installations; and

- c. Urgency does not permit the time necessary to include the required acquisition in an annual Military Construction Authorization Act.

C. Restrictions on Reprogrammings.

- 1. DOD will not submit a request for reprogramming:
 - a. For any project or effort that has not been authorized;
 - b. For any project or effort that has been denied specifically by Congress; or
 - c. To initiate programs of major scope or base realignment actions, when Congress has not authorized such efforts.
- 2. MILCON reprogrammings are sent to the House and Senate Armed Services Committees and the House and Senate Appropriations Committees for approval.
 - a. Generally, committee review process is non-statutory.
 - b. An agency generally will observe committee review and approval procedures as part of its informal arrangements with the various committees, although they are not legally binding. GAO, Principles of Fed. Appropriations Law, p. 2-25.

VII. CONCLUSION.